

**MINUTES OF THE CITY COMMISSION MEETING HELD IN THE
COMMISSION CHAMBERS, CITY HALL, BOYNTON BEACH, FLORIDA,
AT 6:30 P.M., ON TUESDAY, MAY 18, 2010**

Present:

Jose Rodriguez, Mayor
Marlene Ross, Vice Mayor
William Orlove, Commissioner
Woodrow L. Hay, Commissioner
Steven Holzman, Commissioner

Kurt Bressner, City Manager
James Cherof, City Attorney
Janet M. Prainito, City Clerk

1. OPENINGS

- A. Call to Order - Mayor Jose Rodriguez
- B. Invocation
- C. Pledge of Allegiance to the Flag led by Commissioner Steven Holzman

Mayor Rodriguez called the meeting to order at 6:30 pm. A moment of silent prayer was observed followed by the Pledge of Allegiance to the Flag led by Commissioner Holzman.

D. Agenda Approval

1. Additions, Deletions, Corrections

Commissioner Holzman pulled Items 6.H and 6.I for discussion. Commissioner Orlove pulled Item 6.A for discussion.

2. Adoption

Motion

Commissioner Hay moved to approve the agenda. Vice Mayor Ross seconded the motion. The motion passed.

2. OTHER

- A. Informational Items by Members of the City Commission

Vice Mayor Ross noted there were several upcoming firefighter events. Chief Bingham announced September 23 would be the Bru's Room take-over beginning at 5 p.m. and a car wash the preceding Sunday from 11 am to 4 pm in the Bru's Room parking lot, for the benefit of the American Heart Association. There was also the annual golf tournament scheduled for October 23 at the Cypress Creek Country Club to benefit the Juvenile Diabetes Research Fund. The firefighter retirees would be honored at a dinner on June 3 and the annual picnic for all firefighters and families on June 4 would be held at Intracoastal Park.

Commissioner Orlove commended the Mayor for organizing the Commit 2B Fit Walk. There was a tremendous turnout and he thanked all the staff and sponsors who had participated. He hoped it would become an annual event. He also thanked Mr. Livergood, Director of Public Works and Engineering and Mr. Bressner for assisting in the opening of Old Boynton Road.

Commissioner Hay thanked the residents of the Heart of Boynton for attending the meeting with Representative Maria Sachs and the speaker who explained and encouraged organ donation. Mayor Rodriguez had also attended the meeting and gave his overview of plans for District II and the Heart of Boynton.

Commissioner Holzman also commended the Mayor on the first annual Commit 2B Fit walk and joined in hoping it would be an annual event.

Mayor Rodriguez remarked he had attended State Attorney McCullom's Advisory Board meeting where they discussed the efforts of his office to support the cities in Palm Beach County. The Mayor would be attending more of those meetings and would report to the Commission. He commented he was pleased with the attendance at the meeting in the Heart of Boynton. Mayor Rodriguez stressed the credit for the Commit 2B Fit walk should go to the staff, team and sponsors. He was most impressed with the involvement of the citizens and the energy level exhibited. The feedback had been very positive and he supported continuing the event on a more regular basis.

Commissioner Hay interjected the Item on the agenda relating to the Financial Advisory Review Board may need to be tabled. Mr. Bressner reported applications had been received, but many were not eligible to serve. He suggested the item be tabled until June.

Motion

Commissioner Hay moved to table the item. Vice Mayor Ross seconded the motion. The motion passed.

3. ANNOUNCEMENTS, COMMUNITY & SPECIAL EVENTS & PRESENTATIONS

- A. Presentation of Legislative Update by Representative Mary Brandenburg, District 89

Representative Brandenburg did not attend to give her update.

- B. Proclaim the week of May 17 - 21, 2010 as Building Safety Week

Mayor Rodriguez read the proclamation for Building Safety Week, May 17 - 21, 2010 that was accepted by Karl Swierzko, Chief Field Inspector. Mr. Swierzko remarked the theme is "Building Safety, Commemorating a 30-year Legacy of Leadership" and displayed pictures of various devastation that had occurred prior to more strict building codes and inspections. Building Codes cover all aspects of building construction including fire safety, plumbing, electrical, energy efficiency and sustainability. The building officials work closely with architects, builders, engineers and property owners. The technical professionals of the Building Department ensure the safety of all buildings and are the first line of defense against disasters. He thanked the Commission for the recognition of their efforts to ensure building and public safety.

- C. Presentation of the annual Youth Volunteer Bank awards

Lori Wilkinson, member of the Education and Youth Advisory Board, along with Mary Morera and Carol Lundquist, including board liaison Sherri Claude made the presentations. The Youth Volunteer Bank awards were given to youth who volunteered 475 hours through various community organizations and fund raising. Gift cards were awarded and the participants who were present were recognized.

- D. Presentation of the annual "Bob Borovy Student Citizen of the Year Award" by the members of the Education & Youth Advisory Board

Ms. Morera presented the Bob Borovy Award that was created to honor Mr. Borovy who had served many years on the Youth Advisory Board and contributed a great deal to the community and the children. Wachabie Alincy received a check for \$1,000 for first place. Alexis Wolley, the second place winner of \$300, was represented by her brother who excitedly accepted the check on her behalf.

- E. Presentation of a Plaque by Robert W. Clinger, Board President of the Community Caring Center, to the Boynton Beach City Library represented by Craig Clark, Library Director and Karen Abramson, Administrative Secretary

Mr. Clinger, elected President of the Community Caring Center, indicated the Library was being honored for its significant contribution to the food pantry through their food for

fine forgiveness program. Mr. Clinger explained for many of those who utilize the Center, paying their debts was a significant step in their recovery. The plaque was presented to accent the value of the effort of the Library and its staff for helping so many in numerous ways. It was presented to Anne Watts, Assistant Library Director and Karen Abramson, Assistant Secretary to the Director. Ms. Watts was grateful for the opportunity to participate in the effort every fall. She shared the recognition with the staff that did the work of collecting and delivery of the foods collected.

Mayor Rodriguez added the Boynton Beach Library was one of the best in the County. Last month over 36,000 items were borrowed from the Library and attendance had increased over 20% from last year.

Commissioner Hay echoed the Mayor's remarks that the Boynton Beach Library was a top-of-the-line, state-of-the-art Library. Commissioner Orlove applauded the Library and asserted it was the best in the County.

4. PUBLIC AUDIENCE

INDIVIDUAL SPEAKERS WILL BE LIMITED TO 3 MINUTE PRESENTATIONS (at the discretion of the Chair, this 3 minute allowance may need to be adjusted depending on the level of business coming before the City Commission)

Peter McCray, an employee with the Development Department as a Business Inspector, was one of three employees who had been notified of being laid off. He asked the Commission for consideration so the three employee could retain their positions. He voiced concern on the selection process used to identify the employees to be let go. He was a ten-year employee while others with much less time remained employed. The three affected employees had families and it was tough economic times to be without a job

Lori Wilkinson, 2458 SW Cranbrook Drive, noted the school FCAT testing had been scheduled for the week of Passover. She contended it was culturally insensitive. As a teacher, she encouraged students to sleep well the night before the tests and yet the tests are scheduled during a time of family gatherings and religious ceremonies. She further disagreed with the scheduling when recent legislation was proposed to base any teacher merit increases on test results from the FCAT testing during religious holidays. She requested the City send a letter to the Department of Education to urge them to move the testing schedule by one week to avoid the obvious conflict.

Sheri Coale, an employee of the Planning and Development Division and recently laid off, asked the Commission to consider the positions of the three affected employees, their years of service and seniority. She asked the Commission to consider the employees and their families who stood on the edge of an economic abyss.

Don Scantlan, 13 Cedar Circle, advised he enjoyed the Commit 2B Fit Walk and supported continuing the event or other activities more often. As a veteran, he announced the Memorial Day Service on May 30th at the Boynton Beach Memorial Cemetery to honor those who served and gave their lives for their country. Mr. Scantlan commented he did not support a completely independent Community Redevelopment Agency (CRA) Board. Keeping the objectives of the Commission and the Community Redevelopment Agency aligned would be lost with a totally independent Board. The Commission maintains accountability for all taxpayer monies, whether it is City funds or CRA funds. The new board would add an unnecessary layer of management in the process and dilute the accountability of the elected officials.

Barbara Ready, 329 SW 13th Avenue, invited everyone to view the conceptual designs at the Sims Center of the public art feature for the Seacrest Streetscape project. Ms. Ready referred to a recent newspaper article and commented she agreed the CRA should have civic interests and not self interests. She fully supported the Commission as the current CRA Board and did not want to lose the current momentum. She contended there was pending legislation that could require the control of the CRA funds to be with at least two elected officials. Ms. Ready urged the Commission to re-evaluate the consequences before implementing a volunteer CRA Board.

John McGovern, 2620 Spiceberry Lane, remarked a more sane course of action would be to keep the present CRA Board and appoint two additional members from the public to contribute in making policy for the area. Mr. McGovern alleged there should be more accountability for vacation and sick hours of CRA staff. He contended personnel were seen working for a candidate at a City sponsored event, during regular working hours. If so, the policy should be reviewed and more strictly enforced.

Fred Greenberg, an employee in the Building Division and a structural plan reviewer, did not understand the criteria utilized to select the three employees being laid off. He took great pride in working for the City of Boynton Beach and his job to ensure the safety of all citizens. His evaluations had not reflected any poor performance. He confirmed his commitment to the City of Boynton Beach and the requirements of his position.

Herb Suss, 1711 Woodfern Drive, supported a new seven-member CRA Board because the Commission had the ultimate oversight over the CRA Board. He reiterated his contention that the current arrangement was a conflict of interest. Mr. Suss recalled there were CRA staff members working for a candidate during the event previously mentioned. Transparency and perception were critical for an independent CRA Board in his view.

Mayor Rodriguez clarified with the City Attorney that once the independent CRA Board was appointed, the Commission would have very little, if any, oversight over the Board. The new Board would be an independent, legal entity and operates accordingly. The only processes available to the Commission would be to remove the entire board or initiate the process to remove individual board members.

Commissioner Hay remarked the Florida Statutes state quite clearly the responsibilities of the Commission. The Commission had served as the CRA Board with little or no training and had been relatively successful.

Ron Washam, 127 S. Atlantic Drive West, supported an independent CRA Board. It would give the citizens the perception that the elected official were doing the job they were elected to do. The previous CRA Boards had not been given the time to flourish and develop. He urged the Commission to continue to move forward with the independent CRA Board.

Mary Nagle, 2006 S. Federal Highway, did not support the Commission stepping away from the CRA. Many of the residents along the Intracoastal felt they had more support with two members of the Board from their area. She contended if the current Commission relinquishes their input with the CRA, an opportunity for the City to move forward would be lost.

Jerry Gumprecht, 133 SE 7th Avenue, applauded the clean up of Pence Park and the recent community garage sale that had been held at the Park. More events could be held at the location. He supported the Commission remaining as the CRA Board.

No one else coming forward, Mayor Rodriguez closed public audience.

Mayor Rodriguez commented the Commission had previously voted to move forward with a seven-member volunteer board. A motion for reconsideration would have to be brought forward to make any change. He reiterated his opinion that two members should be added to the current CRA Board to facilitate a smooth transition to a fully independent Board. He noted most municipalities in the area with the exception of Delray Beach have the Commission as the CRA Board. Once an independent Board is created there would be no oversight by the Commission. The City Attorney added citizens have the right to start the initiative process under State statute for a referendum to be added to the election for a binding vote. It requires a petition to be brought before the Commission and the Commission would be obligated to place the matter on the ballot as a referendum vote.

Commissioner Hay remarked all the candidates, during the election, on numerous occasions indicated they supported a fully independent board. The only deviation was during the Mayor's opening statement when the concept of two additional members was suggested as an alternative.

Mayor Rodriguez reiterated his position that two members should be added initially to transition to a fully independent Board and he continued to advocate the same position.

5. ADMINISTRATIVE

- A. Appoint eligible members of the community to serve in vacant positions on City advisory boards.

Motion

Commission Orlove moved to table the appointments. Commissioner Holzman seconded the motion. The motion passed.

- B. Appoint members to the Financial Advisory Committee.

(This item was previously tabled)

6. CONSENT AGENDA

Matters in this section of the Agenda are proposed and recommended by the City Manager for "Consent Agenda" approval of the action indicated in each item, with all of the accompanying material to become a part of the Public Record and subject to staff comments.

- A. Approve the Minutes from the City Commission meeting held on May 4, 2010.

Commissioner Orlove requested on page 15 that the minutes reflect he had suggested the time change rather than Commissioner Holzman.

Motion

Vice Mayor Ross moved to approve the change. Commissioner Hay seconded the motion. The motion passed.

- B. **PROPOSED RESOLUTION NO. R10-052** - Approve an extension for two (2) additional one (1) year periods for RFP#034-1210-09/CJD "Real Estate Administrator for the City of Boynton Beach", on an as-needed basis with the currently contracted company HDR Engineering Inc. of Tampa, FL.
- C. Approve t h e "SURPLUS VEHICLE/EQUIPMENT LIST" as submitted by Public Works/Fleet Maintenance and allow for the auction of the same.

- D. **PROPOSED RESOLUTION NO. R10-053** - Approve three (3) Conditional Permit Agreements that have been reissued by Lake Worth Drainage District (LWDD). The Conditional Permit Agreements are between the LWDD and the City of Boynton Beach in support of the City's construction of the new regional force main.
- E. **PROPOSED RESOLUTION NO. R10-054** - Approve the sole source purchase from AMJ Solutions of Great Oak Drive, Lakeland, FL for specialized online controls and instrumentation at a cost of \$54,239.90. - **UNFUNDED MANDATE!**
- F. **PROPOSED RESOLUTION NO. R10-055** - Approve a piggy-back with the City of Ft. Lauderdale's contract #403-10368 with Harcros Chemicals, Inc. of Tampa, Florida for Hydrofluorosilicic Acid (fluoride), for the City's Water Treatment plants. The estimated annual expenditure is \$65,000.00.
- G. Award the Bid for "ANNUAL SUPPLY OF PVC SCHEDULE 40 AND 80 IRRIGATION SUPPLIES" Bid # 036-1412-10/MFD to: Boynton Pump, Bridgeton Plumbing & Heating Supply Company, HD Supply Waterworks, Lehman Pipe & Plumbing, Melrose Supply & Sales Corporation on an overall basis, to the lowest, most responsive, responsible bidders who met all specifications with an estimated annual amount of \$50,000.
- H. Accept Update on Neighborhood Stabilization Program

Commissioner Holzman noted the program was moving quickly and hoped it would continue to encumber the entire amount of monies allocated to stabilize the City of Boynton Beach. He inquired about the purchase price of the property acquired at 8110 Stirrup Cay in relation to the appraised value.

Octavia Sherrod, Community Development Manager, replied the Property Appraiser values are just compensation values and can be 70% to 100% different than the appraised value of a home. The market price paid for the property was based on a market appraisal. Mr. Bressner further explained the Property Appraiser's office will factor in comparable data when available. It is strictly a mathematical formula that is utilized by the Appraiser's office and is generally lower than the market value. Ms. Sherrod explained the purchase price includes a discount after the appraisal is obtained. Quintus Greene, Development Director, further explained the accepted price is accepted by seller before the appraisal. The City is required to purchase the properties below the appraised value.

Commissioner Hay inquired if all the monies would be encumbered within the required time limitation. Ms. Sherrod felt there would not be an issue to have all the funds encumbered, especially because the purchase prices did not include the cost of rehabilitating the properties.

Motion

Commissioner Holzman moved to approve. Commissioner Hay seconded the motion. The motion passed.

- I. **PROPOSED RESOLUTION NO. R10-056** - Approve and ratify the action of the South Central Regional Wastewater Treatment and Disposal Board at their meeting on April 15, 2010.
 - (a) Authorization to amend Rule II, Section 14 of the Board Rules
 - (b) Authorization to decrease our Reclaim User Rate for Hunters Run, Country Club of Florida, Quail Ridge, Delray Dunes and Pine Tree for fiscal Year 2009/2010 to .2417/1,000 gallons.

Commissioner Holzman inquired if the lower rate was based on contracts with the individual communities. Mr. Bressner replied the contracts are with the successor users and the Sewer Board. The City does not have a contract. The Board had authorized a slight reduction because the overall cost of delivery of reuse water had decreased.

Motion

Vice Mayor Ross moved to approve. Commissioner Hay seconded the motion. The motion passed.

Motion

Commissioner Hay moved to approve the balance of the Consent Agenda items. Vice Mayor Ross seconded the motion. The motion passed.

There was consensus of the Commission that the motion to approve the agenda would include approval of the Consent Agenda items not pulled for discussion.

7. BIDS AND PURCHASES OVER \$100,000

- A. **PROPOSED RESOLUTION NO. R10-057** - Award contract for Bid # 038-2821-10/CJD, "Re-bid Seacrest Boulevard Roadway Improvements" to H & J Contracting, Inc. of as the lowest, most responsive, responsible bidder; in the amount of \$1,425,312 which includes Alternate 1 and Alternate #2. Also

approve an additional owner's contingency of 10%, equal to \$142,531, resulting in a total funding authorization of \$1,567,843.

Mr. Livergood commented due to previous bid discrepancies a re-bid had been done. The project utilizes American Recovery and Reinvestment Act (ARRA) stimulus funding of \$1.9 million. The re-bid came in less than the previous bid and included the installation of a reclaim water line saving approximately \$21,000 for the project. The bid would be awarded to H & J Contracting Inc. for \$1,567,843. The remainder of the funding and savings would be returned to the federal government. Andrew Mack, Project Engineer, indicated the reclaimed water aspect would not be allowed for funding. There had been discussion regarding expanding the project to a second phase to use the remaining funds; however, additional monies would have to be requested through the Metropolitan Planning Organization (MPO) to cover the additional cost of a Phase II.

Commissioner Hay was interested in viewing a conceptual design of the proposed enhancements. Mr. Livergood advised there were no drawings available. It would be more extensive medians and landscaping work at the intersection of Martin Luther King Boulevard in conjunction with the public art. Community input altered the original plans for only one lane in each direction to retain the two lanes in each direction. The project should be completed in 365 days.

Commissioner Orlove questioned the possible disruption of traffic along Seacrest. Mr. Livergood advised there would always be a single lane in each direction with anticipated lane closures.

Motion

Commissioner Hay moved to approve Resolution R10-057. Commissioner Orlove seconded the motion. The motion passed.

8. CODE COMPLIANCE & LEGAL SETTLEMENTS

- A. Approve mediated settlement in the amount of \$66,000.
Essie Mae Miller & Moses King v. City of Boynton Beach
Plaintiff Counsel - Mark Egner, Topkin & Egner
Defense Counsel - Michael Burke, Johnson Anselmo Murdoch Burke Piper & Hochman

Attorney Cherof advised it was a recommendation for a settlement of a case that had been sent to mediation through the Court system and an agreement was reached for \$66,000. The recommendation of outside counsel was to settle the case for the mediated settlement amount. The Risk Manager participated in the mediation process.

Motion

Vice Mayor Ross moved to approved. Commissioner Hay seconded the motion. The motion passed.

9. PUBLIC HEARING

7 P.M. OR AS SOON THEREAFTER AS THE AGENDA PERMITS

The City Commission will conduct these public hearings in its dual capacity as Local Planning Agency and City Commission.

Attorney Cherof administered an oath to all those intending to testify in relation to the Timeless Life Care Center and reviewed the procedure that would be followed.

The applicant's representative, Bradley Miller of Miller Land Planning Consultants, had no objection to consolidating, for hearing, Items A, B and C. He noted two of the items were being requested by staff to be tabled. Attorney Cherof concurred that staff was recommending that Items B and C be tabled until second reading of the Ordinance at the June 1, 2010 Commission meeting.

Commissioner Holzman had an issue with the entire conditional use as well as the land use change and wanted to discuss all requests at one time.

- A. **PROPOSED ORDINANCE NO. 10-011 - FIRST READING** - Approve rezoning the property from Mixed Use-Low Intensity (MU-L) to Mixed Use-Low Intensity 2 (MU-L2), (Timeless Life Care) located at 623 South Federal Highway (west side of Federal Highway between SE 5th Avenue and SE 6th Avenue).

Attorney Cherof read Proposed Ordinance No. 10-011 by title only on first reading.

- B. Approve a variance from the City of Boynton Beach Land Development Regulations, Chapter 2, Zoning, Section 11.H.16.a.(8) allowing for a reduction in the number of required parking spaces from 53 to 46, resulting in a variance of 7 spaces for Timeless Life Care (ZNCV 10-005) located at 623 South Federal Highway. Applicant: Eastside Lofts Development, LLC.
STAFF RECOMMENDS ITEM BE TABLED TO JUNE 1ST TO COINCIDE WITH 2ND READING OF CORRESPONDING REZONING ITEM.
- C. Approve Timeless Life Care (COUS 10-001) and (NWSP 10-004) Conditional Use and New Site Plan, for an assisted living facility providing 144 beds within 87 units and ancillary retail, located at 623 South Federal Highway (west side of Federal Highway between SE 5th Avenue and SE 6th Avenue).

Avenue). Applicant: Eastside Lofts Development, LLC. **STAFF RECOMMENDS ITEM BE TABLED TO JUNE 1ST TO COINCIDE WITH 2ND READING OF CORRESPONDING REZONING ITEM.**

Hanna Matras, Economic Planner, located the property along South Federal Highway and explained the request to change the zoning from Mixed Use-Low to Mixed Use-Low 2. The current Code requires concurrent rezoning of the property. The Mixed-Use Low zoning had been discontinued. The Mixed-Use Low 2 complies with the Conditions of Approval for the 2009 site plan extension and was consistent with the vision for the development of the City. The proposed use would be an assisted living facility with 144 beds in a six-story building with 1,000 square feet of ancillary retail space. The requested rezoning and use met all the criteria. There is a high demand for assisted living facilities. There are currently 15 facilities that are very small, for a total of 500 assisted living beds that would not be sufficient for a City of 67,000 citizens. A study had been completed in 2008 by a major firm that revealed by 2020 the number of people over 60 would increase from 23% to 28%. It would be a stable, recession-proof use. The facility would also provide stable employment for approximately 60 workers. Ms. Matras added that 1,000 residential units had been added from Boynton Beach Boulevard to Woolbright Road. There have been four site plan extensions for the site and she projected the housing market would not rebound in the near future. Staff recommended approval of the new zoning to allow the facility to be built.

Commissioner Holzman's first concern was whether the use would improve the downtown area and raise the economic impact of a project downtown. This would be the second facility in the area since the Community Redevelopment Agency (CRA) had entered into an agreement with Auburn to build a senior living facility along Seacrest Boulevard. Commissioner Holzman could not justify using the Federal Highway Corridor for an assisted living facility. Approval of the rezoning would make it difficult, if not impossible to not approve the conditional use. Attorney Cherof concurred once the property was rezoned, the opportunity for denial of a conditional use would be greatly diminished.

Mayor Rodriguez disclosed he had met with the applicant's representative and reviewed the proposed project.

Mr. Miller addressed the Commission and advised the reality of the situation was based on the lack of financing. The proposed project has a property owner that had essentially thrown the value of the property into the deal with an operator of an assisted living facility that had two established facilities elsewhere in Florida. The developers had the necessary private funding and were ready to proceed as quickly as possible. The employment shift would be approximately 20 with an overall employment of 60 to 70 people. The construction employment would also be available. The Mixed-Use zoning that had been adopted many years ago involved low and high criteria. There are

many units in the downtown core and the assisted living use would compliment the area by maintaining a residential component and a retail component. The current zoning is being phased out and the requested zoning would reduce the building height from 75 feet to 65 feet. Mr. Miller reviewed a PowerPoint presentation illustrating the various elevations and surrounding land uses.

The proposed facility would have to be licensed by the State and controlled with the number of residents to 144. There could not be a nursing home component. Mayor Rodriguez questioned if it would be difficult to convert from a assisted living facility to a nursing home. Ms. Matras noted a nursing home would be allowed in the same zoning district. Mr. Breese added it would be a change in the conditional use and another application would be required.

Mr. Miller continued there would be 46 parking spaces and 28% open space with access from 4th Street. Landscape buffers would be on three of the four sides and four existing oak trees would be maintained. A retail space would open onto Federal Highway with doctor offices that would be open to the public. He reviewed drawings of all the floor plans. The design would create some synergy with the facility and Federal Highway and include a courtyard space. The colors were lightened to reflect a less intensive use.

Commissioner Orlove requested additional information regarding the operators of the facility and if they were good stewards of the elders. Mr. Miller would provide more information. Commissioner Holzman remained concerned if the use was appropriate for the property and its relation to downtown. Ms. Matras pointed out the use was consistent with the Federal Highway Plan and general City and Development plans. Mr. Breese noted most of the surrounding zoning is C-3 that would allow nursing homes and assisted living facilities. The Mixed-Use zoning would require the conditional use approval. Mr. Miller added the requested zoning would be following the Comprehensive Plan.

Mayor Rodriguez favored approving the request on first reading and gathering more information before the second reading to satisfy the Commission's concerns and the surrounding public. It would bring life to Federal Highway with some retail component. Commissioner Orlove agreed in part and noted the workers and visitors would bring people to the downtown area and Federal Highway. He did want more information on the organization or company that would be operating the facility.

Vice Mayor Ross concurred with Commissioner Orlove and his request for further information. She was pleased with the job opportunities that would be created.

Motion

Commissioner Hay moved to approve Proposed Ordinance No. 10-011 on first reading. Vice Mayor Ross seconded the motion.

Vote

City Clerk Prainito called the roll. The vote was 5-0.

Motion

Commissioner Hay move to table Items B and C. Vice Mayor Ross seconded the motion. The motion passed.

- D. PROPOSED ORDINANCE NO. 10-012 - FIRST READING** - Amend the Land Development Regulations (LDR) to allow Indoor Athletic Instruction/Training, (CDRV 10-003), including Gymnastics, Dance/Jazzercise/Pilates Instructions, Cheerleading Instruction, Karate Instruction, Indoor Batting/Golf Facilities, as a Conditional Use in the (M-1) Industrial District and as a permitted use in the Planned Industrial Development (PID) zoning districts. Applicant: City-initiated.

Attorney Cherof read Proposed Ordinance No. 10-012 by title only on first reading.

Mr. Breese reviewed the history of the proposed requested change to consolidate a number of like uses that had been differently treated in the M-1 and PID areas. It would include items such as cheerleading instruction, gymnastic centers, dance instruction, Pilates, indoor batting cages, golf centers and those types of facilities. They would require higher ceilings and larger floor spaces that are typically found in the industrial districts. Staff recommended the uses be combined under one heading and allowed in M-1 districts as conditional uses for individual approval to ensure compatibility and public safety. Staff recommended, in the three Planned Industrial Districts (PID), the use be allowed by right with less intensive industrial uses and better traffic patterns.

Motion

Vice Mayor Ross moved to approve Proposed Ordinance No. 10-012. Commissioner Orlove seconded the motion.

Vote

City Clerk Prainito called the roll. The vote was 5-0.

10. CITY MANAGER'S REPORT

- A. Accept the written report to the Commission for purchases over \$10,000 for the month of April 2010

Motion

Vice Mayor Ross moved to approve. Commissioner Orlove seconded the motion. The motion passed.

- B. **PROPOSED RESOLUTION NO. R10-058** - Request by Town of Gulfstream to rescind Resolution 04-154 Regarding Interlocal Annexation Agreement between Gulfstream and Boynton Beach

Mr. Bressner explained the Town of Gulfstream had requested a previous Resolution for annexation of property to be rescinded. The original agreement had been requested by Gulfstream in the event the City annexed the properties, the density levels could not exceed six units to the acre and a height limitation of three stories. There is a proposed development for the Seahorse property that would be outside the parameters of the interlocal agreement between Gulfstream and the City of Boynton Beach. The developer was requesting water and sewer for the property. The Town of Gulfstream has now requested the City of Boynton Beach adopt a Resolution rescinding the 2004 Interlocal Agreement to allow Gulfstream to proceed with the annexation of the properties.

The 2004 Resolution was advisory in nature. The City of Boynton Beach does control the use of the property as the water and sewer provider in the area. It would allow the City to charge the non-resident rate. There was a parallel issue of fire protection to the same area for an automatic response. If the property were to be incorporated in the Town of Gulfstream, Delray will be required to provide the fire service. Until the matter is resolved Boynton Beach would respond to calls on the basis of mutual aid.

Mr. Bressner contended it would not be unreasonable to inquire about the timeline for annexation by the Town of Gulfstream. If pockets of unincorporated areas remained and Delray would not be providing fire rescue services, the County would be requesting aid from Boynton Beach.

Commissioner Holzman needed clarification of the ramifications if the City refused to rescind the prior agreement. Mr. Bressner responded the proposed use of the Seahorse property exceeds the original height and density limitations. The agreement would be in conflict with the developer if the density was not heightened. He emphasized the underlying zoning allows 12 units to the acre, twice more than the parameters of the original Resolution. Attorney Cherof stressed the Town of Gulfstream

was bound by the agreement until 2030. Mr. Bressner recalled the original idea was the City of Boynton Beach would annex the property in 2004. The lower density level was at the request of the Town of Gulfstream.

Commissioner Holzman suggested the City of Boynton Beach should re-visit annexing the properties. Mayor Rodriguez was concerned with the possible perception of forcing changes on another municipality. The legal battle may not be worth the ultimate gain. Mr. Bressner suggested the Town of Gulfstream be asked for a definitive plan of annexation. Attorney Cherof advised the Town of Gulfstream was prohibited by the interlocal agreement with the City of Boynton Beach to annex the property. If there was a clear understanding of the goal and objectives of the Town of Gulfstream, the agreement may only need to be amended rather than rescinded.

Commissioner Orlove questioned if it was in the best interest of the City of Boynton Beach to allow Gulfstream to develop the property to the density they wanted. He had no problem with rescinding the agreement. Mayor Rodriguez wanted to ensure the City of Boynton Beach had some input as the provider of sewer and water.

Commissioner Hay was willing to rescind the agreement, but wanted more information from Gulfstream on their plans for annexation.

Motion

Commissioner Holzman moved to table until a Commission approved plan from Gulfstream regarding the agreement is put forth. Commissioner Hay seconded the motion. The motion passed.

Attorney Cherof suggested the item be moved to Future Agenda items with an unspecified date.

- C. **PROPOSED RESOLUTION NO. R10-059** - Approve amending the Community Development Block Grant (CDBG) Substantial Plan Amendment adopted by Resolution R08-139 dated November 18, 2008 and designating the Boynton Beach Community Redevelopment Agency (CRA) as a sub-recipient of Neighborhood Stabilization Funding in the amount of \$400,000.

Mr. Greene explained the request would amend the CDBG Plan to add the CRA as a sub-recipient for the \$400,000 in NSP funds to be used for the Ocean Breeze development project. It had been previously determined the best use of the funds would be infrastructure improvements. There would need to be an Interlocal Agreement with the CRA to effectuate the process and specify the improvements that would be done with the funds. The agreement would call for execution no later than September 30, 2010. With the agreement signed, approval from Housing and Urban Development (HUD) would be sought. Mr. Greene advised a date had been established as July 1st

for completion to avoid losing the \$400,000. Either non-performance by the CRA or lack of HUD approval would trigger the funding being transferred back into other CDBG incentives.

Commissioner Hay was extremely pleased with the progress. Mr. Greene noted the infrastructure improvements would be focused on the west side of Seacrest Boulevard. Mr. Bressner suggested the item be returned to the July 6th City Commission agenda to assure the project is moving forward.

Lisa Bright, CRA Executive Director, agreed with a fail-safe date for completion, but asked the CRA Board be given until their July 13th meeting to complete the work.

Motion

Commissioner Hay moved to approve Proposed Resolution No R10-059. Vice Mayor Ross seconded the motion. The motion passed.

D. PROPOSED RESOLUTION NO. R10-060 - Approve a Resolution to amend the current budget for fiscal year 2009/2010.

Mr. Bressner noted there was concern with the General Fund and he had been able to reduce the expenditures levels by 1.5%. The figures were based on revenue projects a month ago and the figures could fall more. He was not uncomfortable going over the target for budget reductions of \$1.3 million. Any residual savings would assist next year with the fund balance. The request was made to amend the current budget and restrain the City from spending from the General Fund. The revenue reduction was attributed to development reductions and lack of anticipated State funding. Mr. Bressner cautioned the revenue stream from taxable values would continue to decline over the next year. There would be the three incumbent employees who would be affected by the budget modification. The decision was an operational tool to provide the same level of services. Personnel cost was the last avenue to review for reductions.

Commissioner Hay requested clarification on the selection for lay offs. Mr. Bressner replied it was based on the business activity that could be shifted to other personnel. The seniority issue was dictated by the collective bargaining agreements. The bumping rights are restricted that would be available to only one of the affected employees. Job sharing efforts to date have maintained employee levels.

Mr. Greene stressed it was an excruciating experience to lay off employees. Nevertheless, he pointed out last year was the first time the Development Department did not contribute to the general fund. Better than 93% of the Department budget was attributed to personnel. If the entire operating budget was eliminated, personnel would still have to be let go to meet the budget projections. The decision was not based on the individuals, work effort or seniority, but on service levels and union contracts.

Mr. Bressner stressed program cuts had been made first to finish the fiscal year before personnel cuts had to be made. Sharyn Goebelt, Director of Human Resources, explained if the laid off employee met the minimum qualifications of lesser job qualifications within the Department, the employee could bump.

Commissioner Holzman emphasized the decision was obviously not made lightly. The choices are to make cuts or raise taxes this year and going forward to next year. He sympathized with the individuals who have lost their jobs, but nothing else can be done from the City's standpoint.

Commissioner Orlove inquired if severance packages were available. Ms. Goebelt reported severance was not included but professional assistance would be brought in to assist with resume writing, interview skills, job applications skills and unemployment benefits. She added the bumping would involve lower pay scales. The seniority of the individual would be maintained. There is a ten-day period for bumping. Commissioner Orlove questioned the timing of addressing employee levels and if it would be better left to the budget meetings. He was not in support of making any employee cuts at this time. Program cuts should be implemented first.

Mayor Rodriguez noted taxes could not be raised in the middle of the fiscal year and the budget had to be balanced at the end of the fiscal year and cannot be in deficit. It appeared other alternatives had been investigated and applied before the choice to cut staff was utilized. Mr. Greene added to meet the current fiscal budget levels one employee had to be eliminated. However, to meet the 6% reduction for the next fiscal year would require more staffing cuts. From a morale standpoint in the Department, it was determined that making the cuts at one time would be the best choice to eliminate the uncertainty for the remaining months. Commissioner Orlove surmised that the Voluntary Separation Program proposal could create enough savings to save the three jobs that have been slated for elimination at this time. He sympathized with the morale issue that would be looming over the entire Department.

Mr. Bressner interjected the savings to the City from the Voluntary Separation Program would not be realized until the next fiscal year. It was designed in anticipation of the next fiscal year budget constraints. Mr. Bressner confirmed for Commissioner Orlove that there were no monies in reserve that could save the positions slated for elimination.

Mayor Rodriguez sympathized with the staff members and Mr. Greene. The focus had to be on the entire City and citizens who could be in worse situations. Tougher decisions were looming in the next couple of months and the Commission, as leaders, were obligated to make those decisions. The City was very proud of the fact that no jobs were eliminated last fiscal year.

Motion

Commissioner Holzman moved to approve Proposed Resolution R10-060. Vice Mayor Ross seconded the motion. The motion passed 4-1 (*Commissioner Orlove dissenting*).

- E. Discuss and formalize meeting format for City Commission Budget Workshops to be held July 19-21, 2010 in the Library Program Room from 1pm - 5pm daily.

Three afternoons had been set aside for the workshops to be held in the Library program room. The physical set up of the room would be changed and only the Department Heads and one other individual would be in attendance at the appointed times. Commissioner Orlove opined a brief presentation by each department would be helpful. Commissioner Hay agreed as long as a time limit was established and maintained. Mayor Rodriguez suggested all questions by Commissioners be recognized and resolved before the budget is adopted. Mr. Bressner had compiled budget impact statements that would be most helpful to see the ongoing changes. Commissioner Orlove agreed that specific examples of cost savings would be helpful to be address citizen concerns and questions. Mr. Bressner noted some programs and services may have to furloughed for a few years.

- F. Approve Voluntary Separation Program for non-probationary full-time City employees.

Mr. Bressner reviewed the parameters of the Voluntary Separation Program. All full-time, non-probationary employees would be eligible for the program except for the City Manager. The departure of essential employees could be delayed, but the employee would receive the full benefit of the program upon ultimate departure. There would be a waiver of unemployment benefits that would benefit the City as well. The Voluntary Separation Program did include a clause that the employee would not seek re-employment for at least one year. Mr. Bressner indicated the only negatives were loss of staff capacity and experience walking out the door. The current budget year would have to absorb the cost of any accruals on vacation and sick days that would be paid out. Mayor Rodriguez assumed there was a plan for minimum staffing requirements to operate the City. Mr. Bressner indicated many departments had met the minimum staff requirements.

Motion

Commissioner Orlove moved to approve the Voluntary Separation Program for non-probationary, full-time City employees. Commissioner Hay seconded the motion.

Ms. LaVerriere, Assistant City Manager, pointed out the employee could elect to keep the health insurance coverage through September 30, 2010 or receive the cash equivalent. After September 30, 2010 the participants in the program would be eligible for COBRA benefits.

The motion passed.

11. FUTURE AGENDA ITEMS

- A. Follow-up Staff Report on Pain Management Clinic Regulations (June 1, 2010)
- B. Capital Improvement Status Report - Initial City Commission review of 2010-2011 Capital Improvement Budget (General and Utilities) and Five-Year Capital Improvement Plan (June 1, 2010)
- C. Report and Recommendation for Interlocal Agreement with Palm Beach County Fire-Rescue – Sales Tax Program (June 1, 2010)
- D. Time Change for Regular City Commission meetings – Tabled on May 4, 2010 (June 1, 2010)
- E. Update on Alternative Use of Vacant Landfill Property East of the Boynton Beach Links, Municipal Golf Course (June 1, 2010)
- F. Second draft review of Climate Action Plan (June 15, 2010)
- G. Report and presentation from Waters-Pelton, Inc. - Update on formation of 501c3 foundation (June 15, 2010)
- H. Art in Public Places (AIPP) Annual Presentation – Overview of Program Year 09/10 with preview of 2010/11 – (June 15, 2010)
- I. Final approval of Climate Action Plan (July 20, 2010)
- J. Budget Workshops – July 19-21; Library Program Room; 1 pm – 5 pm daily; including adoption of Tentative Millage Rate for FY 2010/11 and Preliminary Fire Assessment Resolution for FY 2010/11

- K. Appoint members to 7 member independent Community Redevelopment Agency Board (August 3, 2010)
- L. Police Complex – Discussion of project timing, scope, location and funding alternatives available (TBA)

12. NEW BUSINESS

- A. Consideration of the Boynton Beach Public Library being utilized for Early Voting Site for August 2010 and November 2010 Ballot

Mr. Bressner explained the Statutes limited early voting locations to City Halls or Libraries. During the last election early voting, there was some damage to the building and the County did not fully reimburse the City. The County Supervisor of Election was looking for sites east of I-95. The voting would be open to all electors and not confined to residents of Boynton Beach. There were some staff incremental costs for the City, but Library staff costs were reimbursed. Commissioner Hay noted it would be unfair for the City to incur any cost. Mr. Bressner noted there was one slip and fall case in terms of liability so there would be some risk exposure. Commissioner Hay reported the last round of early voting did create some goodwill that could not be quantified. He was concerned that any costs be reimbursed.

Motion

Commissioner Holzman moved to approve and Commissioner Hay seconded the motion. The motion passed.

13. LEGAL

- A. **PROPOSED ORDINANCE NO. 10-010 - SECOND READING** - Approve amendment to add a definition for aeration Windmills and corresponding provisions and standards (CDRV 10-002) to the Land Development Regulations (LDR), Chapter 2. Zoning, Section 4.J.27, including a maximum height of 25 feet, and limitation to nonresidential zoning districts for the purpose of aerating wet detention areas Applicant: City initiated.

Attorney Cherof read Proposed Ordinance No. 10-010 by title only on second reading.

Motion

Commissioner Orlove moved to approve Proposed Ordinance No. 10-010. Vice Mayor Ross seconded the motion.

Mayor Rodriguez opened the issue for public hearing. No one came forward. Mayor Rodriguez closed the public hearing.

Vote

City Clerk Prainito called the roll. The vote was 5-0.

- B. **PROPOSED RESOLUTION NO. R10-061** - Appoint a member of the City Commission to represent the City of Boynton Beach on the Sister Cities' Committee

Vice Mayor Ross indicated her interest in accepting the appointment.

Motion

Commissioner Orlove nominated Vice Mayor Ross to serve as the Sister Cities' representative. Commissioner Hay seconded the motion. The motion passed.

14. UNFINISHED BUSINESS

- A. Review and approve CRA application, rating matrix and proposed appointment timeline.

Ms. LaVerriere indicated the suggested changes had been included and the scoring matrix was created for approval. There were five areas established for ranking the applicants. A proposed timeline was also submitted for review and approval. The need for interviews was an outstanding issue to be determined by the Commission.

Commissioner Hay felt the need for interviews should be optional and based on a collective agreement by the Commission. It would have to be a unanimous decision to not conduct an interview. Commissioner Hay stressed the appointments be made as expeditiously as possible and suggested shortening the application submittal time from 45 days to 30 days.

Vice Mayor Ross was satisfied with the application as submitted. There was extensive discussion relating to the specificity needed in the questions being asked. It was determined there was no legal implication being violated by asking about individual interests or hobbies. The regular meeting date should be stated with a footnote that other meetings may be necessary. Upon advice of Attorney Cherof, "any ownership or financial interest in property" by the applicant or family member, would be the definitive language to determine any possible conflict of interest. Mr. Bressner suggested the items be numbered on the application in conjunction with the matrix and value of the ratings. There was extensive discussion relating to the viability of adding weights to the scoring. There was consensus to add email capabilities to the technology

competencies. Mr. Bressner suggested there needed to be a more clear, differential between skill sets and professional experience. Mayor Rodriguez suggested placing technical competencies in the skill sets rather than the technology question. Vice Mayor Ross and Commissioners Orlove and Hay felt community involvement and professional competencies had a higher value. Commissioner Holzman believed technical and professional competencies were the two highest as did Mayor Rodriguez. Commissioner Orlove reiterated adding weights would be counter-productive. It was agreed the proposed matrix would be acceptable.

Commissioner Hay strongly urged the Commission to strive for the August 3rd deadline as the completion of the process and reduce the application period to only 30 days. The decision was made to accept the timeline as submitted with August 3rd for the appointments with the only delay being the possible need for interviews.

Motion

Commissioner Holzman moved to approve the application and timeline as changed. Commissioner Hay seconded the motion. The motion passed unanimously.


15. ADJOURNMENT

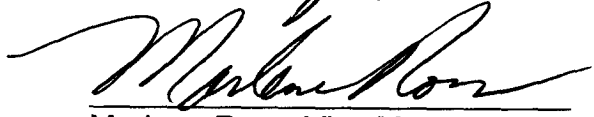
There being no further business to come before the Commission, Mayor Rodriguez properly adjourned the meeting at 11:01 pm.

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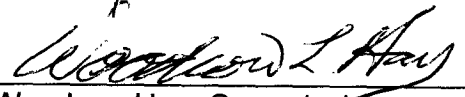
May 18, 2010

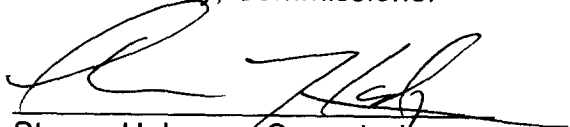
CITY OF BOYNTON BEACH



Jose Rodriguez, Mayor


Marlene Ross, Vice Mayor

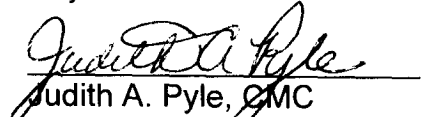
William Orlove, Commissioner

Woodrow Hay, Commissioner

Steven Holzman, Commissioner

ATTEST:



for Janet M. Prainito, MMC
City Clerk

Judith A. Pyle, CMC
Deputy City Clerk